Supp. 912. Consequently the exception of intentional injuries inflicted by another person exempts the insurer from liability when the insured is murdered, irrespective of the mode of the murder. *Travellers' Ins. Co.* v. *McConkey,* 127 U. S. 661, 32 L. Ed. 308. It is held, however, that this provision does not exempt the insurer from liability where the insured is killed by an insane person, incapable of forming a rational intent. *Marceau* v. *Travellers' Ins. Co.,* 101 Cal. 338, 35 Pac. 856. A few cases in line with the principal case, hold that the liability of the insurer under this provision in the policy is to be determined by the intent entertained by the assailant at the time he commits the act and not the actual results accomplished thereby. *Richards* v. *Travellers' Ins. Co.,* 89 Cal. 170, 26 Pac. 762, 23 Am. St. Rep. 455. Thus it has been held that the exception is not operative where the insured was shot by a sheriff attempting to make an arrest, it appearing that the officer did not know the insured at the time and while intending to kill someone, did not specifically intend to kill the insured. *Utter* v. *Insurance Co.,* 65 Mich. 545, 32 N. W. 812, 8 Am. St. Rep. 913. But such does not seem to be the accepted rule. It is true that death at the hands of another may be purely accidental as where the death of the insured resulted from a gun-shot wound inflicted by a robber, it not appearing that the robber intentionally discharged the weapon. *Railway Officials and Employees Acc. Assn.* v. *Drummond,* 56 Neb. 235, 76 N. W. 562. The generally accepted rule on authority, it seems, and certainly on principle, is that where the act is intentional, is directed against the assured, and some injury to him is intended, the exception applies and the insurer will be released from liability on the policy, even if the injury sustained is not that precisely intended by the perpetrator, either in its nature, or in the results which accrue from it. *Matson* v. *Travellers' Ins. Co.,* 93 Me. 469, 45 Atl. 518, 74 Am. St. Rep. 368. Thus where insured made an assault, and the assaulted person, in order to protect himself, struck and injured the insured, the injury was intentionally inflicted, though he may not have intended to have inflicted the particular injury which resulted. *Fidelity & Casualty Co. of N. Y.* v. *Smith,* 31 Tex. Civ. App. 111, 71 S. W. 391.

In the principle case the act was intentional, it was directed against the insured and direct injury to the insured was intended, and the fact that the injury sustained by the assured was not the precise one intended by the person making the assault would seem too much of a refinement.

PROCESS—SERVICE BY TELEPHONE.—A statute provided that summons was to be served, by the sheriff or other officer, reading the same to the party or parties named as defendant. *Held,* valid service cannot be made by the officer reading the summons to the defendant over the telephone, though the officer recognized the defendant's voice and was certain that he was talking to the proper person. *S. Lowman & Co.* v. *Ballard* (N. C.), 84 S. E. 21.

It is well settled that where a statute provides for service of process by certain persons, or by designated methods, the requirements of

the statute must be strictly complied with or there is no valid service. *Blake* v. *Smith,* 67 N. H. 182, 38 Atl. 16; *McCoy v. Crawford,* 9 Tex. 353. And to constitute a valid service of process by reading it, the whole of it must be read; stating the material parts only is not enough. *Crary* v. *Barber,* 1 Col. 172; *Maher* v. *Bull,* 26 Ill. 348. Service by reading in the presence and hearing of the defendant is insufficient, for the reading must be to the defendant. *Hynek* v. *Englest,* 11 Iowa 210. But it has been held that the formality of having a process read as required by statute, may be waived under certain circumstances. *Williamson* v. *Cocke,* 124 N. C. 585, 32 S. E. 963; *Casteel* v. *Hiday,* 13 Ind. 536. And it seems that if all is done that the law requires, as to the manner of serving process, the doing of additional superfluous acts will not vitiate the service. *Bozarth* v. *Largent,* 128 Ill. 95, 21 N. E. 218.

The nearest adjudicated case involving the question decided in the principal case, holds, under a statute requiring the service of a subpœna by reading the same in the hearing of the witness, that a service by telephone was no valid service. *Ex parte Terrell* (Tex. C. R.), 95 S. W. 536. This view derives some support in the fact that the demand for payment of a note cannot be made by telephone. *Gilpin* v. *Savage,* 201 N. Y. 167, 94 N. E. 656, 34 L. R. A. (N. S.), 417, Ann. Cas. 1912A, 861. And is even more strongly supported by a case holding that an oath cannot be administered over the telephone under a statute providing that affidavits may be made before either of certain enumerated officers. *Sullivan* v. *First Nat. Bank,* 37 Tex. Civ. App. 228, 83 S. W. 421. It has also been held that the privy examination of a married woman necessary to validate her conveyance of real estate cannot be taken over the telephone. *Webster* v. *Hurt,* 123 Tenn. 508, 130 S. W. 842, 30 L. R. A. (N. S.) 358.

The tendency of the authorities is to support the doctrine of the principal case.

SALES—TIME OF DELIVERY—ACCEPTANCE OF BILL OF LADING.—The plaintiff contracted to sell goods to the defendant stipulating for immediate delivery to a certain carrier for shipment. Immediate delivery was not made, but subsequently, after the goods had been received by the carrier, the defendant accepted a bill of lading for them. The shipment being delayed *in transitu,* the defendant refused to accept the goods. An action was brought by the plaintiff for the purchase price. *Held,* the title had passed, and the plaintiff can recover. *Corby Supply Co.* v. *Thompson* (Mo.), 171 S. W. 661.

Where time is of the essence of a contract of sale, a failure to deliver the goods at the time agreed upon gives a right of rescission. *Ellinger* v. *Comstock,* 13 Ind. App. 696, 41 N. E. 351. But this is qualified by the rule that a stipulation as to time of delivery may be waived by an acceptance of the goods. *Ohio Falls Car Co.* v. *Menzies,* 90 Ind. 83, 46 Am. Rep. 195; 2 MECHAM, SALES, § 1374. When there has been such a waiver, the right to rescind is lost, and the failure of the vendor to deliver as agreed is no defense to an action for the purchase price.